Date: April 18, 1990

Case No: 90-TLC-30

In the Matter of

HOWARD LUDWIG, JR.,
Employer

on behalf of

SIX (6) UNIDENTIFIED H-2A WORKERS
Aliens

Before: FRANK J. MARCELLINO
Administrative Law Judge

DECISION AND ORDER

This case arises under Part 655 of Title 20 of the Code of Federal Regulations (20 C.F.R. §655 et al) governing the labor certification process for the temporary employment of aliens in the United States.

Statement of the Case

This review of the denial of temporary alien labor certification is based on the record upon which the denial was made, together with the request for administrative review or a de novo hearing, as contained in the Appeal File (AF l-65), and any written arguments of the parties. The request for administrative review is granted, and the Regional Administrator's denial of temporary labor certification is affirmed.

1. On February 6, 1990, Howard Ludwig, Jr., owner of Ludwig Hog Farms, located in Lockport, of Lemont, Illinois), Illinois (with a business address filed an application to hire six (6) alien workers as farm laborers for the anticipated period of employment from April 15, 1990, until December 15, 1990. (AF 47-65).

2. The laborers are required to perform seasonal work involving nursery stock planting and harvesting, livestock birthing and tending, vegetable planting, maintenance, landscape and sod work. Farm workers are to be paid the prevailing wage of $4.88 per hour, and landscape workers are to receive $7.18 per hour. (AF 55).

3. In the application, the Employer stated that he had posted help wanted signs in local business establishments with responses only from high school students unable to work within the essential time period or unwilling to work the hours required.

4. The Employer also had applied and been granted H-2A temporary certification for six workers in 1989.

5. On March 2, 1990, the Certifying Officer advised the Employer that he should inform her by March 23, 1990, of the results of recruitment efforts with local job service offices. The Certifying Officer noted that she may not be able to grant certification without such written response. The deadline was extended to March 27, and again until April 4, 1990, with no written response from the Employer. (AF 42-43).

6. On April 3, 1990, the Regional Administrator informed the Employer that his application was denied because the Employer failed to respond in writing concerning his recruitment efforts, and information from the local Illinois Department of Employment Services office indicated that 18 qualified U. S. workers were referred to the Employer and that attempts to contact the Employer had been unsuccessful. (AF 28-30).

7. On April 9, 1990, the Employer's request for administrative review or a de novo hearing was received. The Administrative File was received from the Certifying Officer on April 12, 1990.[1] The Employer described the steps he took in complying with the Regional Administrator, including a pre-filing conference on February 5, 1990, and ending with an April 5, 1990, telephone conversation with the Regional Administrator concerning the reasons for denial of the application. The Employer denied that he was uncooperative with the local Illinois Job Services offices. (AF l-20).

Discussion

Since the Regulations prohibit me from considering any additional evidence (submitted after the Regional Administrator denied certification), the record is absent any indication that the Employer in fact interviewed all qualified and available workers or provided such applicants

[1] In his request for review, the Employer also lists his contacts with the job service offices at Kankakee, Murphysboro, Joliet, Olney and the Illinois Migrant Council in Aurora. The Employer provides additional evidence, indicating that interviews scheduled as a result of these contacts resulted in numerous no-shows, with only two applicants appearing. These two applicants, it is alleged, were rejected for lawful job-related reasons.

However, this new evidence cannot be considered on review. The Regulations prohibit the consideration of additional evidence on administrative review, and deny this Office the power to remand a case to the Regional Office for the consideration of this additional evidence. See 20 C.F.R. §655.112(a). This written evidence should have been submitted to the Regional Office before the second extended deadline. In fact, the failure of the Employer to timely submit this documentation is exactly the reason the Regional Office denied certification.

with lawful job-related reasons for rejection. Even if I considered the evidence which was not timely filed, I do not believe that the Employer made a good faith effort to contact all applicants which were forwarded to him by the job services offices. did not show up for the interviews, While many of the applicants the Employer does not account for all of the applicants which the Regional Administrator lists as being referred to the Employer.

Therefore, the Regional Administrator was correct that he could not certify that the employment of H-2A temporary alien qualified workers will not adversely affect the wages and working conditions of workers in the United States similarly employed.

ORDER

The denial of temporary labor certification is hereby affirmed.

FRANK J. MARCELLINO
Administrative Law Judge

Washington, D.C.